

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH JACKSON,	§
	§
Petitioner Below,	§ No. 84, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for Kent County
	§ C.A. No. 08M-01-004
Respondent Below,	§
Appellee.	§

Submitted: April 6, 2012

Decided: June 5, 2012

Before **BERGER**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 5th day of June 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Joseph Jackson, filed this appeal from the Superior Court's denial of his petition for return of property. After careful consideration, we find no merit to Jackson's issues on appeal. Accordingly, we affirm.

(2) The record reflects that Jackson pled guilty in December 2008 to two counts of delivery of cocaine. The Superior Court sentenced him as an habitual offender to a total period of twelve years at Level V imprisonment. Following his arrest but prior to his guilty plea, Jackson filed a petition

seeking the return of a 2004 Harley Davidson motorcycle that had been seized by police. The Superior Court held a hearing on Jackson's petition in June 2009. The State presented evidence that, over the course of several months, undercover officers had made controlled drug purchases from Jackson, worth hundreds of dollars and always paid for in twenty dollar bills. During the course of these purchases, an undercover officer saw a photograph of Jackson on a motorcycle. Upon executing the warrant leading to Jackson's arrest, officers could not locate the motorcycle. They subsequently received information that Jackson was hiding the motorcycle from police at a friend's house. Officers obtained a search warrant for the friend's house but did not find the motorcycle. The friend, who was aware of Jackson's drug dealing activity, told officers that he was with Jackson when Jackson purchased the motorcycle with a large roll of cash. Someone living in Jackson's home later informed officers that the motorcycle had been returned to Jackson's property, where police later seized it after executing a warrant.

(3) Jackson testified that he did not sell drugs and had pled guilty only to avoid the possibility of a life sentence because of his habitual offender status. He claimed that he had purchased the motorcycle from his cousin, Ronnie Gearhart, for \$19,000 in cash, and that he had been self-

employed, making \$120,000 a year since his release from prison in February 2006 on a 2001 drug sentence. He also claimed to have made over \$80,000 gambling at Dover Downs. Jackson testified that when he gambled he won 99.9% of the time, but produced no tax returns reflecting any of these alleged earnings. In fact, his last tax return was filed in 1996. In rebuttal, the State called Earl Ronald Gearhart, who testified that he was not related to Jackson and that he had sold the motorcycle to Jackson in March 2007 for \$6,800, for which Jackson had paid in cash in twenty dollar bills. Gearhart produced a receipt for the sale.

(4) Following the hearing, the Superior Court concluded that the State had met its burden of establishing probable cause that the motorcycle was subject to forfeiture pursuant to 16 *Del. C.* § 4784(a)(7) as a profit of Jackson's drug sales.¹ The trial court further found that Jackson had not sustained his burden of showing by a preponderance of the evidence that the

¹ Section 4784 of Title 16 of the Delaware Code sets forth items that are subject to forfeiture to the State. Subsection 4784(a)(7) provides, in relevant part, that the following items shall be forfeitable to the State, "All moneys, negotiable instruments, securities or any other thing of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all profits or proceeds traceable to securities, assets or interest used, or intended to be used, to facilitate any violation of this chapter."

motorcycle was not subject to forfeiture.² Accordingly, Jackson's petition for return of property was denied. This appeal followed.

(5) Jackson raises three issues in his opening brief on appeal. First, he contends that the State could not obtain forfeiture without filing an in rem forfeiture application. Second, Jackson contends that the Superior Court erred in finding that the State had probable cause to seize his motorcycle. Finally, Jackson argues that the State could not obtain forfeiture of his motorcycle without proving a nexus existed between the motorcycle and any drug sales.

(6) The record reflects that the State, pursuant to Superior Court Civil Rule 71.3(a), provided notification of its seizure of the motorcycle and informed Jackson of his right to petition for return of the property. Jackson filed his petition for return of the motorcycle under Rule 71.3(c) within the required 45 day period. The Superior Court held a hearing on Jackson's petition. In these circumstances, the State was not required to file an in rem forfeiture application. Under Rule 71.3(b)(4), an in rem forfeiture application is required only when "no petition for the return of such property

² See *Brown v. State*, 721 A.2d 1263, 1265 (Del. 1998) (establishing the relative burdens of proof in a forfeiture proceedings).

has been filed.”³ Because Jackson filed a petition for return of property in this case, we reject his first contention on appeal.

(7) Jackson’s final two claims are closely related and will be considered together. He argues that the Superior Court erred in finding that the State had probable cause to seize the motorcycle and, moreover, that the State failed to prove a nexus between the motorcycle and illegal drug sales. We review the Superior Court’s findings under a clearly erroneous standard.⁴

(8) In this case, “probable cause” for forfeiture required the State to prove that a “reasonable ground” existed to believe that the motorcycle was purchased with proceeds from Jackson’s drug sales.⁵ After hearing the testimony, the Superior Court found that Jackson had been released from prison in February 2006, following a five-year sentence on a drug conviction. Although he claimed to be legitimately self-employed making \$120,000 per year upon his release from prison, Jackson produced no evidence to support this claim. In fact, he had not filed an income tax return since 1996. Moreover, the State proved, through various undercover purchases in 2007, that Jackson sold drugs for cash. Jackson also falsely

³ Del. Super. Ct. Civ. R. 71.3(b)(4) (2012).

⁴ *Brown v. State*, 721 A.2d at 1265.

⁵ See *In re One 1985 Mercedes Benz Auto.*, 644 A.2d 423, 428 (Del. Super. 1992).

claimed to have purchased the motorcycle from a cousin and had purposefully hidden the motorcycle to avoid its seizure. Under the circumstances, we find no error in the Superior Court's conclusion that the State had probable cause to seize the motorcycle as a profit of Jackson's drug sales under 16 *Del. C.* § 4784(a)(7).

(9) The Superior Court also correctly rejected Jackson's claim that the State had failed to establish a nexus between the motorcycle and illegal drugs sales to justify forfeiture. Contrary to Jackson's argument, the State did not contend that the motorcycle was subject to forfeiture under 16 *Del. C.* § 4784(a)(4) because it had been used to facilitate drug sales. Rather, the State sought forfeiture of the motorcycle as a profit traceable to Jackson's illegal drug sales under 16 *Del. C.* § 4784(a)(7). The State established probable cause for forfeiture on that ground, and Jackson failed to establish by a preponderance of the evidence that he had purchased the motorcycle with money that was legally earned. Consequently, we find no error in the Superior Court's denial of Jackson's petition for return of property.

NOW, THEREFORE, IT IS ORDERED that the judgment of the
Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice